

Amended Minutes of the April 28, 2006 Meeting of the
Commission on Governmental Ethics and Election Practices
Held in the Commission's Meeting Room,
PUC Building, 242 State Street, Augusta, Maine

Present: Chair Jean Ginn Marvin; Hon. Mavourneen Thompson; Hon. Vinton E. Cassidy; Hon. Andrew Ketterer. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:06 A.M., Chair Ginn Marvin convened the meeting. The Commission considered the following items:

Agenda Item #1 – Ratification of Minutes of the March 22, 2006 Meeting

Ms. Gardiner suggested that the minutes be amended to clarify that Assistant Attorney General Christopher Taub was present for Agenda Item #2 while Phyllis Gardiner was present for the other agenda items. Ms. Gardiner also recommended that the minutes regarding Agenda Item #8 reflect Mr. Ketterer's request that the Commission be updated on the status of any enforcement action.

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to adopt the minutes of the January 5th meeting as amended by Phyllis Gardiner.

Ms. Ginn Marvin thanked Michael Bigos for his work as a Commission member. Ms. Ginn Marvin welcomed new Commission member Ms. Thompson.

Mr. Bigos thanked Ms. Ginn Marvin for her leadership of the Commission and thanked Ms. Gardiner and the Commission staff for the work they have done. Mr. Bigos welcomed Ms. Thompson to the Commission.

Agenda Item #2 – Appeal of Denial of Certification/Adam Scharff

Mr. Wayne explained that Mr. Scharff sent his Maine Clean Election Act certification materials by FedEx to the Commission's mailing address rather than its physical address. As a result, the Commission did not receive these materials until two days after the deadline. Mr. Wayne said that the staff supports Mr. Scharff's qualification.

Ms. Gardiner said that Mr. Scharff's appeal requires the Commission to undertake formal hearing procedures. Ms. Gardiner recommended that Mr. Scharff be sworn in before presenting his appeal. Ms. Ginn Marvin swore in Mr. Scharff.

Mr. Scharff explained that the Federal Express office told him the certification materials would be delivered to the Commission office on Tuesday, April 18. Mr. Scharff said he did not find out until April 20 that the materials were not received on time. Mr. Scharff said that the materials were delivered to some unknown location on April 18 at 9:48 a.m. and were signed for by D. Olmstead, an individual who does not work for the Ethics Commission or state government. Mr. Scharff said that caucus director Paul Brunetti contacted him on April 19 to tell him that the Commission did not receive his certification materials. Mr. Scharff said he contacted the Commission staff on April 20th, and the staff informed him that they did not have his materials. Mr. Scharff said the package was finally delivered to the Commission office on the 20th. Mr. Scharff said that the Federal Express office in Augusta faxed a letter to the Commission claiming responsibility for the improper delivery.

Mr. Cassidy moved and Ms. Thompson seconded a motion to allow Mr. Scharff's appeal of the denial of his Maine Clean Election Act certification.

Mr. Ketterer said that many people outside of state government may not be aware of the difference between State House Station numbers and physical office addresses. Mr. Ketterer said the staff recommendation was reasonable.

The Commission voted unanimously (4-0) to grant Mr. Scharff's appeal of the denial of his Maine Clean Election Act certification.

Agenda Item #3 – Unreported Expenditures by Cianbro in Support of Peter Cianchette

Ms. Ginn Marvin stated that she was recusing herself from this agenda item due to a potential conflict of interest. Ms. Ginn Marvin requested that Mr. Ketterer serve as chair in her absence.

Mr. Wayne explained that Ronald Harwood, a former employee of Cianbro Corporation, requested an investigation into Cianbro's activities in support of Peter Cianchette's 2002 gubernatorial campaign. Mr. Wayne said that Cianbro and Mr. Cianchette have been very responsive to the Commission's questions and requests regarding Cianbro's expenditures in support of the candidate. Mr. Wayne said that Cianbro and Mr. Cianchette reported the total expenditures by Cianbro in support of the campaign to be \$68,608.87. Mr. Wayne said that, due to nominal consultation between Cianbro and the Cianchette campaign, Mr. Cianchette has accepted that Cianbro's expenditures were a contribution to his campaign. Mr. Wayne said that Mr. Cianchette has filed updated campaign finance reports with the Commission that reflect those contributions.

Mr. Cianchette said that he and Cianbro conducted a thorough audit of Cianbro's records to determine which Cianbro's activities were intended to support Mr. Cianchette's campaign. Mr. Cianchette stated that he did not have personal knowledge of the contributions from Cianbro, but there was communication between Cianbro and his campaign staff. Mr. Cianchette said that he had amended all of the necessary reports and filed them with the Commission two weeks prior to the meeting.

Mr. Ketterer said that it was important to have accurate reports on file even though the election in question happened in 2002.

Ms. Thompson said that the changes to Mr. Cianchette's finance reports represent a significant increase in the amount of money spent in the 2002 gubernatorial election. Ms. Thompson

wondered if reporting the contributions from Cianbro when they were made in 2002 would have affected matching funds payments to Jonathan Carter or changed the outcome of the election. Mr. Cianchette responded that he believed he was following all the necessary laws regarding campaign finance reporting. Mr. Cianchette said that he could not have reported Cianbro's contributions in 2002 because he was not aware of them at the time.

Ms. Thompson wondered if the existing election law was sufficient to prevent future problems with reporting contributions.

Mr. Ketterer asked Mr. Cianchette if he had counsel present at the meeting. Mr. Cianchette replied that Christopher Howard was representing him.

Mr. Ketterer asked whether Mr. Cianchette believed Cianbro's activities to be an independent expenditure or an in-kind contribution. Mr. Cianchette responded that he considered them to be in-kind contributions to his campaign.

Christopher Harwood, an attorney with Pierce Atwood, said that Mr. Cianchette's lack of knowledge concerning Cianbro's activities did not exempt his campaign from reporting Cianbro's contributions.

Mr. Ketterer asked if the signs put up by Cianbro employees were provided by Cianbro or by the Cianchette campaign. Mr. Cianchette said that the signs were purchased by his campaign and distributed to various people who requested them, including Cianbro.

Mr. Cassidy asked how Mr. Cianchette arrived at the amount of Cianbro's contribution. Mr. Cianchette said that Cianbro conducted an audit of their ledgers to calculate the expenditures on labor and materials in support of the Cianchette campaign.

Mr. Cassidy asked why no members of Cianbro management thought to contact the Cianchette campaign about Cianbro's campaign activities. Mr. Cianchette said that there was no one individual at Cianbro who was responsible for organizing campaign activities, but rather a

diffuse group of employees who were volunteering for the campaign. Mr. Howard said that there should have been a better system among Cianbro management to keep track of and report the company's campaign activities.

Ms. Thompson said that the law as it existed in 2002 did not allow the Commission to assess a penalty against Cianbro for making an over-the-limit contribution to the Cianchette campaign. Ms. Thompson said it was her understanding that the Commission could only provide a written statement finding fault with the company. Mr. Wayne replied that there could be no penalty for the over-the-limit contribution, but there could be a penalty against Mr. Cianchette for failure to file a complete report by the deadline. Mr. Wayne said it was also possible for the Commission to fine Cianbro for late reporting, if the Commission considered the expenditures to be independent expenditures. Mr. Wayne said that there was a \$5,000 maximum fine per report.

Ms. Thompson said that the Commission was obligated to uphold the standards of the democratic process and the Clean Election law. Ms. Thompson asked Mr. Cianchette and Mr. Howard what they thought would be the strongest finding the Commission could make. Mr. Howard said that the correct finding, consistent with the law, would be that Cianbro made in-kind campaign contributions. Mr. Cianchette agreed, saying that it was an issue of proper reporting. Mr. Cianchette said that he filed amended reports within 2 weeks of becoming aware of the contributions from Cianbro.

Mr. Cassidy said there was no question that there were violations, but the question is whether the Commission should assess a penalty based on the seriousness of those violations.

Ms. Thompson asked if it would be right for the Commission to penalize the Cianchette campaign rather than Cianbro. Ms. Thompson requested further discussion on the role of Cianbro in influencing the campaign and whether the company should be penalized. Mr. Ketterer said that such discussion would continue after the Commission members questioned Mr. Cianchette and Mr. Howard.

Mr. Ketterer asked if Mr. Howard represented both Cianbro and the Cianchette campaign. Mr. Howard responded that he did.

Mr. Ketterer asked about Mr. Cianchette's relationship with Cianbro. Mr. Cianchette said that he left employment with Cianbro in 1985 and was not affiliated with the company after that. Mr. Cianchette said that his father is chair of the board and his brother works for the company.

Mr. Cianchette said that there is no longer a campaign to assess a penalty against, so he would assume sole responsibility for the actions of his campaign staff.

Mr. Harwood said that was difficult to determine all of the expenditures Cianbro made toward the Cianchette campaign. Mr. Harwood said that falsification of records on Cianbro's behalf would be a Class E crime, and Mr. Cianchette purposefully avoided reporting Cianbro's contributions.

Ms. Thompson asked Mr. Harwood what his role was in the "airport hanger job." Mr. Harwood said that he served as the superintendent of tools and supply at Cianbro's Pittsfield office. Mr. Harwood said that the budget allocated to his department had money taken out to pay for the hanger job, which is how the company referred to the use of employees to put up campaign signs. Mr. Harwood said that this activity was common knowledge within the company and that employees were subject to punishment for discussing its legality.

Clarence Ayotte introduced himself as a former Cianbro employee. Mr. Ayotte said that he declined a request to put up campaign signs around Rumford, and that he had the ability to decline because he was a supervisor. Mr. Ayotte said that the request for employees to put up signs was brought up during a safety meeting, during which one employee objected and was reprimanded. Mr. Ayotte said that Mr. Cianchette is responsible for his campaign's activities. Mr. Ayotte said that the money to put up the signs came from the employees themselves due to Cianbro's profit sharing system. Mr. Ayotte said that Cianbro's contributions to the campaign probably amounted to more than \$53,000 and that that money should be returned to the employees who worked for the company at that time.

Ms. Thompson asked Mr. Harwood if the campaign work was kept secret within the company. Mr. Harwood replied that it was not a secret and that the company distributed a memo asking employees to vote for Mr. Cianchette. Mr. Harwood said that a personnel worker had campaign signs in her truck during work hours.

Mr. Ketterer said that Cianbro's employee profit sharing was not part of the issue being addressed by the Commission. Mr. Ketterer said that the Commission should limit itself to deciding on the in-kind contribution issue and the accuracy of the finance reports.

Ms. Thompson asked if the available options presented to the Commission by the staff had changed due to the comments heard during the meeting.

Mr. Wayne said that the issue turns on one sentence in the statute. Mr. Wayne, reading from the statute (21-A M.R.S.A. §1015(5)), said that Cianbro's expenditures would be in-kind contributions if there was cooperation or consultation between Cianbro and the Cianchette campaign. Mr. Wayne said that while Mr. Cianchette acknowledged that there were communications between Cianbro and his campaign, it was up to the Commission to decide whether those communications were sufficient to categorize Cianbro's activities as an in-kind contribution.

Ms. Gardiner said that a factual finding for the Commission to make would be whether Cianbro acted in consultation, cooperation or concert with the Cianbro campaign, making its activities an in-kind contribution.

Mr. Ketterer said that an in-kind contribution is difficult for many to conceptualize. Mr. Ketterer said it may be difficult to determine the total cost of Cianbro's campaign activities. Mr. Ketterer said that an independent expenditure places the burden to file a report on the person or entity making the expenditure, but the signs placed by Cianbro were provided by the Cianchette campaign.

Mr. Cassidy said that it was difficult to keep track of the activities of large campaigns. Mr. Cassidy said that it was not unusual for companies to participate in political campaigns or support candidates, but they are required to report these activities.

Ms. Thompson asked what the penalty would be against Cianbro for its lack of reporting.

Ms. Gardiner asked Ms. Thompson whether she was asking about the penalty for an over-the-limit contribution or an unreported independent expenditure. Ms. Gardiner said that under the 2002 law, Cianbro cannot be penalized for making an over-the-limit contribution.

Mr. Ketterer said that it could be the case that Cianbro disguised its campaign contributions in a deliberate attempt to circumvent the contribution limits and reporting requirements.

Ms. Gardiner said that the law was amended in 2004 to allow for civil penalties toward those who make over-the-limit contributions.

Mr. Ketterer asked the Commission members if they agreed that Cianbro made an in-kind contribution rather than an independent expenditure.

Ms. Gardiner said that if the Commission members agree that Cianbro made an in-kind contribution, they can then decide whether Mr. Cianchette's 2002 finance reports were substantially compliant.

Ms. Thompson moved, Mr. Cassidy seconded and the Commission voted unanimously (3-0) to find as a fact that there was an over-the-limit contribution made by Cianbro Corporation and received by the Cianchette campaign.

Ms. Gardiner said that the next step would be for the Commission to determine which of Mr. Cianchette's originally-filed reports were substantially nonconforming and thus late.

Ms. Thompson asked the staff for its recommendation on which reports should be considered late.

In response, Mr. Wayne suggested that the Commission may want to keep in mind two non-quantitative facts along with the reports. First, Mr. Cianchette stated that he intended to file complete reports. Second, Mr. Wayne said that the entirety of the penalty would fall on Mr. Cianchette. Mr. Wayne said that Mr. Cianchette was also responsible for reporting the in-kind contributions made to his campaign. Mr. Wayne said that the Cianchette campaign underreported the contributions it received by 24% on the 42-Day Post-General report, which could be considered an incomplete report. Mr. Wayne said that the 6-Day Pre-General underreported contributions by 13.1%. Mr. Wayne said that the other reports filed by the campaign had a much lesser percentage of missing contributions.

Ms. Thompson asked if the Commission had previously given fines for underreporting. Ms. Gardiner said that it had, but she did not know what criteria the Commission had used for deciding if an instance of underreporting warranted a fine.

Mr. Cassidy said that there was an issue before the Commission the previous fall where a candidate did not know that one of his campaign workers had failed to deliver checks. Mr. Cassidy said that the Commission had to determine if the candidate was late even though he had reason to believe the checks had been delivered.

Ms. Thompson said that the violation was more serious than just late reporting. Ms. Thompson said that Cianbro is partly to blame but cannot be fined by the Commission, so the Commission is left with the option of a late filing penalty against Mr. Cianchette.

Mr. Ketterer said that while the late filing penalty is the method the Commission must use to assess penalties, he considered the violation to be very serious. Mr. Ketterer said that the Commission should make some determination on the compliance of the five reports filed by Mr. Cianchette in 2002.

Ms. Thompson asked if Mr. Cianchette's revised contribution amounts were factually correct. Mr. Wayne replied that the numbers were provided by Cianbro and that there is no evidence that they were incorrect.

Mr. Cassidy said that while there should be some penalty, the amount remained to be determined. Mr. Cassidy said that the penalty could be a maximum of \$5,000. Mr. Cassidy said that the Commission must be fair to Mr. Cianchette but also encourage future candidates to keep track of their campaigns.

Ms. Thompson moved, and Mr. Ketterer seconded, that the Commission assess the maximum penalty of \$5,000 for faulty reporting in each of the five reports filed by Mr. Cianchette in 2002.

Mr. Cassidy said that the maximum penalty seems too high considering that Mr. Cianchette filed in a timely manner after the Commission requested amended reports. Mr. Cassidy said the Commission should also take into consideration that Mr. Cianchette will have to pay the fine on behalf of his campaign.

Mr. Ketterer said that the penalty amount should not be included in the same motion as the determination on the accuracy of the reports. Mr. Ketterer said that the 42-Day Post-Primary and 6-Day Pre-Primary should be considered substantially compliant since few in-kind contributions from Cianbro were received during those periods.

Ms. Thompson said that the maximum penalty should be assessed due to the gravity of the violations. Ms. Thompson said that it was not possible to put a dollar amount on Cianbro's influence in the election.

Mr. Ketterer said that the law only allows the Commission to assess fines if the reports were substantially noncompliant.

The Commission voted 1-2 to assess the maximum penalty of \$5,000 for faulty reporting in each of the five reports filed by Mr. Cianchette in 2002. Ms. Thompson voted for the motion. Mr. Ketterer and Mr. Cassidy voted against the motion and the motion failed.

Mr. Cassidy said that the penalty should be substantial but also fair. Mr. Cassidy said that \$10,000 was a good penalty amount based on these criteria.

Mr. Cassidy moved, and Mr. Ketterer seconded, that the Commission assess the maximum penalty of \$5,000 for Mr. Cianchette's 6-Day Pre-General and 42-Day Post-General reports for a total penalty of \$10,000.

Mr. Ketterer said that he disagreed with the motion because the Commission should first decide whether each report meets the requirements of the law rather than deciding on a fixed fine.

Mr. Cassidy said that the first two reports are not sufficiently noncompliant to justify a penalty. Mr. Cassidy said that he was willing to amend his original motion to make it clearer which reports were found in violation. Mr. Cassidy withdrew his motion and Mr. Ketterer withdrew his second.

Mr. Ketterer said that the Commission should first come to a finding of violation before voting on penalties.

Ms. Thompson moved, Mr. Ketterer seconded, and the Commission voted unanimously (3-0) to find that Mr. Cianchette's 42-Day Pre-General, 6-Day Pre-General and 42-Day Post-General reports from the 2002 election did not substantially comply with the law.

Ms. Gardiner said that the Commission could decide to reduce a penalty from the maximum amount of \$5,000 if the penalty is deemed disproportionate or the violation resulted from mitigating circumstances.

Mr. Wayne said that Mr. Cianchette's good-faith effort to provide accurate reports should be taken into consideration.

Mr. Ketterer said that the Commission generally assumes the accuracy of the information being reported by campaigns unless someone challenges the reports. Mr. Ketterer said that the information contained in the reports has various uses during an election, for instance in computing matching funds payments.

Ms. Thompson expressed her concern about a lack of precedents set by the Commission on proper reporting practices.

Ms. Thompson moved, Mr. Cassidy seconded, and the Commission voted unanimously (3-0) to assess penalties of \$2,000 for Mr. Cianchette's 42-Day Pre-General report, \$5,000 for the 6-Day Pre-General report, and \$5,000 for the 42-Day Post-General report.

Agenda Item #4 – Request for Advisory Opinion/Maine for Mills PAC

Ms. Ginn Marvin rejoined the meeting and resumed her role as Chair.

Mr. Wayne said that Michael Healy, treasurer of the Maine for Mills PAC, requested an advisory opinion from the Commission on whether the PAC's activities would constitute in-kind contributions to the Mills campaign. Mr. Wayne said that Mr. Healy disagreed with the Commission staff's advice to Senator Mills, who asked the PAC to disband.

Daniel Riley introduced himself as an attorney with Bernstein Shur in Portland who serves as counsel for the Maine for Mills PAC. Mr. Riley said that Senator Mills was concerned that any of the PAC's expenditures would be a contribution to his campaign. Mr. Riley disagreed, saying that they would be independent expenditures rather than in-kind contributions. Mr. Riley said that Mr. Healy wanted a definitive ruling from the Commission. Mr. Riley said that since there was no coordination between Senator Mills and the PAC, the PAC's activities could only be considered independent expenditures.

Ms. Gardiner said that the issue was whether a person giving money to the PAC was in fact contributing to the Mills campaign, since the PAC was only supporting a single candidate. Mr. Riley responded that Senator Mills had no control over how the money donated to the PAC would be used.

Daniel Billings introduced himself as a representative of the Woodcock for Governor campaign. Mr. Billings said that the campaign was satisfied with how the Commission staff handled the Maine for Mills PAC issue. Mr. Billings said that a PAC should be able to act independently from a candidate without its activities being considered in-kind contributions. Mr. Billings said that there was a question of when a PAC, like Maine for Mills, can be considered independent from a candidate's campaign. Mr. Billings said that Senator Mills mentioned Michael Healy as a supporter and a worker on his gubernatorial campaign. Mr. Billings said that the Commission should address this issue of what makes a person or PAC an agent of a campaign.

Mr. Ketterer said that the request for an inquiry was not fully developed and that there was no specific case that the Commission could address.

Mr. Ketterer moved, Ms. Thompson seconded and the Commission voted unanimously (4-0) to table Mr. Healy's request for an advisory opinion.

Agenda Item #5 – Request for Waiver of Late-Filing Penalty/Paul Volle

Mr. Wayne said that Agenda Items #5, #6, and #7 relate to the requirement that PACs re-register with the Commission every two years. Mr. Wayne said that the Commission staff had received re-registration forms from all but about 10 PACs. Mr. Wayne said that the statute provides for a penalty of up to \$250 for failing to re-register. Mr. Wayne said that Mr. Volle had three PACs registered with the Commission, but none of them filed a re-registration by the March 1 deadline. Mr. Wayne said that Mr. Volle claimed to have not received the notice detailing the re-registration requirement. Mr. Wayne said that the staff recommended a penalty of \$100 based on the Commission's previous determination against the Yarmouth Taxpayers' Association.

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation of a total penalty of \$100 against the three PACs organized by Paul Volle.

Agenda Item #6 – Request for Waiver of Late-Filing Penalty/South Portland Coalition

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation of a \$100 penalty against the South Portland Coalition.

Agenda Item #7 – Request for Waiver of Late-Filing Penalty/Don't Mortgage ME

Mr. Ketterer moved, Mr. Cassidy seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation of a \$100 penalty against Don't Mortgage ME.

Agenda Item #8 – Request for Waiver of Late-Filing Penalty/Richard Wurfel

Mr. Wayne said that Mr. Wurfel sent a letter requesting a waiver of the penalty for a late lobbyist report. Mr. Wayne said that Mr. Wurfel was not a professional lobbyist but was working on one issue on behalf of the Professional Firefighters of Maine. Mr. Wayne said that the same standards should apply to Mr. Wurfel as to all other lobbyists.

Mr. Cassidy moved, Mr. Thompson seconded and the staff voted unanimously (4-0) to adopt the staff recommendation of a \$100 penalty against Richard Wurfel.

Agenda Item #9 – Assessment of Late-Filing Penalty/Alvin Schulman

Mr. Wayne said that Mr. Schulman was required to file two campaign finance reports as a candidate for Portland City Council in 2005. Mr. Wayne said that he did not file the 42-Day Post-General report on time and was referred to the Commission by the Portland city clerk. Mr. Wayne said that Mr. Schulman filed the report on March 21 when he was placed on the agenda for the previous Commission meeting.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to adopt the staff recommendation of a \$100 penalty against Alvin Shulman.

Agenda Item #10 – Referral to Attorney General for Collection of Civil Penalty/Alfred Piombino

Mr. Wayne said that Mr. Piombino filed two late reports, which accumulated a fine of \$3,314.19. Mr. Wayne said that in a conversation with Mr. Piombino, he advised him to request a waiver of the penalties. Mr. Piombino declined to request a waiver and expressed that he wished to pay off the entirety of the penalty. Mr. Wayne said that Mr. Piombino had only paid \$200 of the penalty and has since moved to New Jersey. Mr. Wayne recommended referring the collection of the penalties to the Attorney General's office.

Mr. Ketterer moved, Ms. Thompson seconded, and the Commission voted unanimously (4-0) to refer the collection of penalties against Alfred Piombino to the Attorney General.

Agenda Item #11 – Meeting Dates for May - August

The Commission members agreed to meet on May 8 if there is an appeal of a denial of Clean Election certification. Otherwise they discussed scheduling a meeting for sometime in June.

There being no further business, Ms. Ginn Marvin moved, Ms. Thompson seconded, and the Commission unanimously voted (4-0) to adjourn.

Respectfully submitted,

Jonathan Wayne
Executive Director